



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

November 23, 2016

PR 16-32B

Mr. Justin Katz

RE: Katz v. Employees Retirement System

Dear Mr. Katz:

This correspondence serves as a supplemental finding to Katz v. Employees Retirement System, PR 16-32, released on July 28, 2016. In Katz, we reviewed your January 13, 2016 Access to Public Records Act ("APRA") complaint and concluded that the Employees Retirement System of Rhode Island ("ERSRI") did not violate the APRA when it denied your December 21, 2015 APRA request on the grounds that the request would have required the ERSRI to perform a calculation that they had not performed and that could only be performed at a cost to Rhode Island taxpayers. The sole issue to be addressed in this finding is whether your rebuttal dated February 11, 2016, which was not considered in our original finding, alters our conclusion.¹

Your February 11, 2016 rebuttal states, in pertinent part:

"ERSRI's contention that the requested information 'does not exist' is untrue in a logical sense, and in any sense in which it might be said to be true, it is irrelevant under the law. The actuarial valuation report provided to ERSRI by Gabriel Roeder Smith & Company (GRS) explains its methodology in relevant part as follows (fiscal year 2015 valuation report, page 34):

¹ Your APRA request sought:

"the actuarial FUTURE value of future benefits for all active and retired state employees and teachers as of the end of fiscal year 2015. This should be the total, undiscounted values that produce the 'total actuarial present value of future benefits' numbers shown on pages 14 and 15 of the latest valuation report by Gabriel Roder Smith. Please provide the numbers separately for state employees and for teachers."

‘First, the actuarial present value of future benefits is determined by discounting *the projected benefits for each member* back to the valuation date using the assumed investment return rate as the discount value The present value of the expected benefits payable to all active members is added to the present value of *the expected future payments* to retired participants and beneficiaries to obtain the present value of all expected benefits.’ [Alterations supplied by you].

My request for ‘the actuarial future value of future benefits’ is plainly synonymous with ‘the projected benefits’ and ‘the expected future payments.’ The requested records, therefore, clearly ‘exist’ as individual estimates for each member, and the sum or aggregate of a collection of numbers also exists as a matter of logic.

Moreover, under Rhode Island General Law § 38-2-3(h), agencies are expressly required ‘to reorganize, consolidate, or compile data’ if it is ‘in an electronic format and the public body would not be unduly burdened in providing such data.’ No reasonable understanding of an undue burden would apply to the process of adding numbers together, especially when those numbers exist in a digital spreadsheet or database capable of applying the much-more-complicated formula determining a present value of that total.

RIGL § 38-2-10 places the burden of proof ‘on the public body to demonstrate that the record in dispute can be properly withheld.’ A simple assertion that some cost might be incurred for producing the information does not constitute a proof. In what format do the estimates for individual members currently exist? What would be the steps for adding them together? How much would GRS—with which the state has a lucrative, long-term relationship—charge ERSRI in order to perform this rudimentary calculation? Answers to such questions would be the very minimum components of a proof.”

In response to an inquiry from this Department on this issue, the ERSRI provided a correspondence on October 19, 2016, which contained an affidavit from Patrick Marr, Chief of Staff to General Treasurer Seth Magaziner. The affiant states, in relevant part:

“2. I have reviewed the APRA Request made by Justin Katz on September 2, 2016 [sic] (Request).

3. Currently, ERSRI has contracted with Gabriel Roeder Smith (GRS) to perform calculations provided by Rhode Island General Laws [§] 36-8-1 *et seq*, and [§] 36-10-1 *et seq* or when preparing fiscal notes pursuant to RIGL [§] 36-10-39 for proposed derivatives thereof.

4. I requested that GRS assess the complexity and cost associated with accommodating the Request.

5. GRS informed me that the Request would require substantial programming and customization to their systems, potentially costing tens of thousand[s of] dollars.

6. The Request for the projected benefit payments for each individual member in ERSRI, is a request to create a very large dataset with one row for each individual member of ERSRI (ostensibly across all plans) showing the amount of benefit they are expected to receive every year out into the future.

7. This Request would require production of a new report with several hundred thousand data points.

8. To complete this exercise would take substantial programming in the GRS system to create an entirely new output that ERSRI has never asked the firm to create.”

You responded, indicating that Mr. Marr’s affidavit was unclear concerning whether the affidavit was addressing the total amount of undiscounted future liabilities for all members in the aggregate, or whether Mr. Marr’s affidavit concerned the undiscounted future liabilities for each member. You suggested that this was a “point worth clarifying now.”

Rhode Island General Laws § 38-2-3(h) provides:

“Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.” (Emphasis added).

In Katz, PR 16-32, this Department determined that the above-quoted provision did not require ERSRI to “reorganize, consolidate, or compile data,” and we explained that “this is a case where a public body would have to perform a never-before executed calculation to create a non-existent document in order to satisfy your APRA request.” We added that “even the precise data you seek – the undiscounted future value – is data that does not presently exist.”

Your chief argument is that the actuarial future value of future benefits must exist “as a matter of logic,” because this data would have been necessary to calculate the “total actuarial present value of future benefits,” which appears in a GRS report. You maintain that the methodology explained by GRS in its report supports your position. As such, you argue that ERSRI would “not be unduly burdened in providing such data.”

After reviewing all of the evidence, we conclude that production of the requested documents would constitute an undue burden to the ERSRI. The evidence reveals that ERSRI requested that GRS assess the complexity and cost associated with accommodating your APRA request and was advised that to fulfill your APRA request “substantial programming and customization to their systems” would be required.² As explained by the ERSRI, the documents you are requesting—the actuarial future value of future benefits—are not part of GRS’s computational outputs, either on an individual member basis or in the aggregate. Instead, you are seeking the middle step in GRS’s

² For purposes of this supplemental finding we consider, arguendo, that ERSRI and GRS are the same legal entity subject to the APRA.

multistep process, where extracting the middle step would require considerable computer system re-programming. In this respect, your assertion that the “numbers” i.e., the future value of future benefits, “exist in a digital spreadsheet or database” is unsupported. Although the raw data necessary to make these calculations are available to the public on the ERSRI website,³ your APRA request can only be produced by requiring GRS to compute a new output. Therefore, the issue is not whether you have access to the raw data, but whether the APRA requires GRS/ERSRI to compute the new output.

Mr. Marr’s affidavit describes the computation of this new output as “potentially costing tens of thousands [of] dollars[.]” Our past findings place the undue burdensome threshold at a far lower level. See Azar v. Town of Lincoln, PR 13-21 (finding that requiring Town to make transcripts or DVD recordings of meetings already publicly available online constituted an undue burden). Respectfully, you have provided no evidence to the contrary. As we previously noted, “the fact that this calculation has not been performed and could only be performed at a cost to Rhode Island taxpayers supports [our] conclusion.” Katz, PR 16-32. Accordingly, we find that the ERSRI did not violate the APRA. See R.I. Gen. Laws § 38-2-3(h).

One additional point warrants discussion. As explained by ERSRI, the calculations are performed by inputting individual-level data, which the computer model aggregates. Therefore, in order to produce your requested aggregate number, ERSRI must initially utilize individual-level data. Accordingly, we find no discrepancy between your request for data in the aggregate and Mr. Marr’s affidavit explaining the calculations on an individual level.

In sum, because we find that the requested documents cannot be produced without imposing an undue burden on the ERSRI, we affirm our previous finding. Please be advised that we are closing your file as of the date of this correspondence.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Sean Lyness
Special Assistant Attorney General

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Cc: Ms. Gayle C. Mambro-Martin, Esq.

³ See <http://data.treasury.ri.gov/dataset/active-employee-data-for-ers-and-mers-2014>;
<http://data.treasury.ri.gov/dataset/ersri-actuarial-valuation-reports-and-data-for-2014>.